### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

THE PROCTER & GAMBLE COMPANY,

1:08-CV-01532 (WHP) (THK)

Plaintiff,

DECLARATION OF JULIE

- against -**ELKINTON IN SUPPORT OF** 

PLAYTEX PRODUCTS, INC.'S

OPPOSITION TO P&G'S PLAYTEX PRODUCTS, INC.,

MOTION FOR SUMMARY

JUDGMENT AND CROSS-Defendant.

MOTION FOR SUMMARY

**JUDGMENT** 

I, Julie Elkinton, hereby declare:

- 1. I am the Vice President of Marketing for Playtex North America, Playtex Strategic Business Unit of Energizer Personal Care. I have held this position since November 2007. From November 2005 until November 2007 I was Vice President of Marketing for Feminine Care at Playtex Products, Inc. ("Playtex").
- 2. As Vice President of Marketing for Playtex North America I supervise the marketing for the Gentle Glide product line. I submit this affidavit in support of Playtex's consolidated opposition to The Procter & Gamble Company ("P&G")'s motion for summary judgment and cross-motion for summary judgment in the above captioned matter.
- 3. After the version of Gentle Glide that is currently on the market ("New Gentle Glide") was launched, Playtex was not aware of any advertisements or

promotional materials comparing the leakage protection of Tampax Pearl to "Playtex Gentle Glide" or "the next leading brand" until March 2008.

- On or about March 3, 2008, P&G began airing television advertisements 4. ("March 2008 Ads") claiming that its New Pearl plastic tampon "protects even better than the next leading brand." It is my understanding that the ad attached as Exhibit A also ran in the Washington Post on March 2, 2008, stating that "Women choose Tampax 2 to 1 ... The tampon with unique built-in backup protection."
- 5. Playtex's first knowledge of the March 2008 Ads claiming that the New Pearl plastic tampon "protects even better than the next leading brand" was on March 4, 2008.
- When the March 2008 Ads aired, Playtex's New Gentle Glide was, and 6. continues to be, the "next leading brand."
- 7. On or about May 1, 2008, P&G ran a print ad in Seventeen Magazine that stated, "a leak can ruin everything" and "don't be fooled by look-alikes. Look before you leak." A true and correct copy of the May 2008 ad is attached as Exhibit B.
- 8. It is my understanding that P&G ran a print ad in the Washington Post on or about May 4, 2008 claiming that the New Pearl plastic tampons "give you more leak free periods than the next leading brand." The same ad is scheduled to run on or about June 1, 2008. A true and correct copy of the ad is attached as Exhibit C.
- 9. It is my understanding that on or about May 4, 2008 P&G also ran a print ad in the Washington Post that stated, "look before you leak" and "not all products are created equal." A true and correct copy of the ad is attached as Exhibit D.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.

Dated: May 28, 2008

# EXHIBIT A

2008 Page 2 of 2
\$100 Off \$\square{2008}\$

any two (2) Tampax®, Tampax Compak Pearl or Tampax Pearl (18ct or higher)



CONSUMER: Redeem ONLY CONSUMER: Redeem ONLY
by purchasing the brand
size(s) indicated. May not be
reproduced. Void if transferred
to any person, firm, or group
prior to store redemption. You
may pay any sales tax. Any other
use constitutes fraud. LIMIT
ONE COUPON PER PURCHASE.

ONE COUPON PER PURCHASE.

BEALER: Sending to Procter
& Gamble, 2150 Sunnybrook
Drive, Cincinnati, 0H 4523,
Signifies compliance with
"Requirements for Proper
Coupon Redemption." Copy
available by writing to the above
address. Cash Value 1/100
of 16. Procter & Gamble
080302
68 ©2008 P&G



Find out why.

Women choose

TAMPAX

2 to 1

Purchase Tampax today and save.







The tampon with unique built-in backup® protection.

MANUFACTURER COUPON EXPIRATION DATE: 03/31/08

any one (1) Always Pads, Clean or Feminine Cleansing Cloths

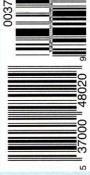


### P&GbrandSAVER

CONSUMER: Redeem ONLY CONSUMER: Redeem ONLY
by purchasing the brand
size(s) indicated. May not be
reproduced. Vold if transferred
to any person, firm, or group
prior to store redemption. You
may pay any sales tax. Any other
use constitutes 'raud'. LIMIT
ONE COUPON PER PURCHASE.

DEALER: Sending to Procter & Gambie, 2150 Sunnybrook Drive, Cincinnati, 0H 45237, signifies compilance with "Requirements for Proper Coupon Redemption." Copy available by writing to the above address. Cash Value 1/100 of 16, Procter & Gamble 0800302

©2008 P&G



075355

MANUFACTURER COUPON

\$100

any two (2) Always® **Pantiliners** (34ct or higher)







**P&GbrandSAVER** 

CONSUMER: Redeem ONLY by purchasing the brand size(s) indicated. May not be reproduced, volid if transferred to any person, firm, or group prior to store redemption. You may pay any sales tax. Any other use constitutes fraud. LIMIT ONE COUPON PER PURCHASE.

DEALER: Sending to Procter & Gamble, 2150 Sunnybrook Drive, Cincinnati, 014 45237, signifies compliance with Requirements for Proper Coupon Redemption. Copy available by writing to the above address. Cash Value 1/100 of 1e. Procter & Gamble 080302



\*Based on sales volume vs. the next leading brand.

# EXHIBIT B



Why risk it?

Only Tampax
has LeakGuard™
Built-in Backup®
to help stop leaks
before they start.
So don't be fooled
by look-alikes.

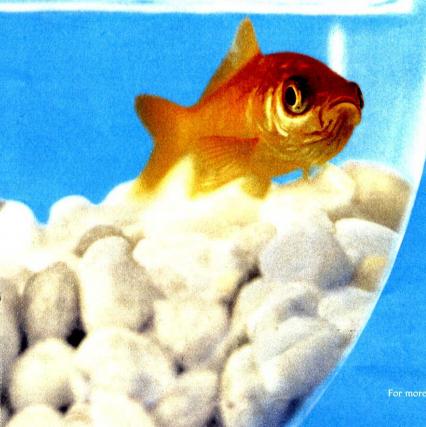
Look before you leak.





# EXHIBIT C





Why risk it? Only Tampax Pearl Plastic® has LeakGuard™ protection built in to give you more leak-free periods than the next leading brand. So look before you leak.



For more information on Tampax Pearl, go to www.beinggirl.com

# **EXHIBIT D**

Document 50-5

# Filed 06/02/2008 Page 2 of 2 S1.00 Off

any two (2) Tampax®, Tampax Compak Pearl or Tampax Pearl (18ct or higher)

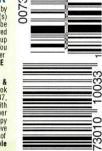






CONSUMER: Redeem ONLY by purchasing the brand size(s) indicated. May not be reproduced. Void if transferred to any person, firm, or group prior to store redemption. You may pay any sales tax. Any other use constitutes fraud. LIMIT ONE COUPON PER PURCHASE.

DEALER: Sending to Procter & Gamble, 2150 Sunnybrook Drive, Cincinnati, OH 45237, signifies compliance with "Requirements for Proper Coupon Redemption." Copy saidable written to be proceed to the control of the contr available by writing to the above address. Cash Value 1/100 of 1¢. Procter & Gamble 080504 763 080504 ©2008 P&G



MANUFACTURER COUPON EXPIRATION DATE: 05/31/08

any two (2) Always® Pad, Clean or Feminine Cleansing Cloths

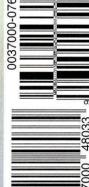




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07 1¢. Proct 080504 ©2008 P&G

**\$1.00** Off

any two (2) Always Pantiliner (34ct or higher)





P&GbrandSAVER CONSUMER: Redeem ONLY by purchasing the brand size(s) indicated. May not be reproduced. Void if transferred to any person, firm, or group prior to store redemption. You may pay any sales tax. Any other use constitutes traud. LIMIT ONE COUPON PER PURCHASE.

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OK before you

eak

Messing with your feminine protection is risky business not all products are created equal. Tampax® and Always®

have LeakGuard™-unique built-in backup protection that helps stop leaks before they happen.

Look to LeakGuard™ for powerful protection against leaks.